

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

WILLIAM B. JOLLEY,
Petitioner

v.

**DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT,**
Respondent

2022-2061

Petition for review of the Merit Systems Protection Board in Nos. SF-0752-13-0583-M-1 and SF-0752-14-0286-M-1.

ON MOTION

PER CURIAM.

O R D E R

The Department of Housing and Urban Development (“HUD”) moves to waive Federal Circuit Rule 27(f) and dismiss this appeal for lack of jurisdiction. William B. Jolley opposes and moves for sanctions against HUD and for summary disposition in his favor. For the following reasons, we grant HUD’s motion and dismiss.

“[A] petition to review a final order or final decision of the [Merit Systems Protection] Board shall be filed in the United States Court of Appeals for the Federal Circuit . . . within 60 days after the Board issues notice of the final order or decision.” 5 U.S.C. § 7703(b)(1)(A). This requirement is “mandatory and jurisdictional,” and thus cannot be waived or equitably tolled. *Fedora v. Merit Sys. Prot. Bd.*, 848 F.3d 1013, 1016 (Fed. Cir. 2017) (citation omitted). To be timely, the petition must actually be received by the court on or before this deadline, not just timely mailed. *Id.*; see Fed. R. App. P. 25(a)(2)(A).

Here, the Board issued notice of its final decision on May 20, 2022, ECF No. 2 at 52, and the court received Mr. Jolley’s petition on Wednesday, July 20, 2022 (61 days later), ECF No. 1-2 at 1 (stamped receipt date). Mr. Jolley provides a United States Postal Service receipt indicating that he mailed his petition on July 13, 2022 (54 days after the notice), but as noted above, that does not constitute “filing” with the court. Fed. R. App. P. 25(a)(2)(A). Nor is that receipt’s “*Estimated Delivery Date*” of July 18, 2022 (59 days after the notice), ECF No. 26 at 14 (emphasis added), sufficient to show *actual* delivery of the petition to the court any earlier than the stamped date of July 20, 2022.

Accordingly,

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IT IS ORDERED THAT:

- (1) The motion to dismiss is granted. The petition for review is dismissed.
- (2) Each party shall bear its own costs.
- (3) Any other pending motion is denied.

FOR THE COURT

June 7, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Acting Clerk of Court